

ORDINANCE NO. 658-05

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AMENDING SECTIONS 2.06.020, 2.06.030, AND 2.06.080 OF THE UNION
CITY MUNICIPAL CODE, RELATING TO LIMITATIONS ON CAMPAIGN
CONTRIBUTIONS IN MUNICIPAL ELECTIONS**

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.06.020 of the Union City Municipal Code is hereby amended to read as follows:

"2.06.020 Definitions.

Unless the term is specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) shall govern the interpretation of this chapter.

Election Period.

- A. For each general municipal election, held in November of ~~odd-even~~ numbered years to elect three full four-year-term Councilmembers, and ~~odd-even~~ numbered years to elect one full four-year-term Councilmember and one full four-year-term Mayor, the election period means the period beginning on January 1st or after the previous general municipal election for the affected office and ending on December 31st after the next following (and current) general municipal election for the affected office.
- B. For each special municipal election, held to fill a vacancy in the office of the Mayor or Councilmember, the election period means the period beginning on the day the vacancy in the office began and ending on the sixtieth day following the special municipal election, provided that for any candidate at the special election who had established, prior to the vacancy, a committee for the election to the affected office of Mayor or Councilmember, the election period means a period beginning on January 1st after the previous general municipal election for the affected office."

Section 2. Section 2.06.030 of the Union City Municipal Code is hereby amended to read as follows:

"2.06.030 Campaign contributions— Limitations.

- A. No person shall make a contribution to any candidate or the controlled committee of such a candidate, and no candidate or the candidate's controlled committee shall accept from each such person a contribution or contributions totaling more than ~~five~~six hundred dollars for any election period.
- B. No person shall make a contribution to any committee which makes independent expenditures to support or oppose any candidate, and no such committee shall accept from any person a contribution totaling more than ~~five~~six hundred dollars during an election period.

C. The candidate's own money or property used in the furtherance of the candidate's campaign shall not be subject to the contribution limits of this chapter."

Section 3. Section 2.06.080 of the Union City Municipal Code is hereby amended to read as follows:

"2.06.080 Return of campaign contributions.

The intended recipient of any contribution which would cause the total amount of contributions to a committee from a single donor to exceed ~~five~~six hundred dollars shall, within forty-eight hours of receipt thereof, return any such excess to the donor. In the event an excessive campaign contribution is received and reported in the campaign report, the recipient shall, within forty-eight hours of notification by the City Clerk, return such excess to the donor; if such excess is not returned within such ten working days, the recipient shall promptly transmit to the City Clerk for deposit in the general fund of the City, a sum equal to such excess "

Section 4. Publication and Effective Date This ordinance shall be published once in The Argus, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, within fifteen (15) days from and after its adoption, and shall take effect and be enforced thirty (30) days after its adoption.

PASSED AND ADOPTED this 27th day of September 2005.

(d)(5)

MAYOR

ATTEST:

(d)(5)

CITY CLERK

APPROVED AS TO FORM:

(d)(5)

CITY ATTORNEY

State of California)
County of Alameda)
City of Union City)

I, Karen Diaz, City Clerk of the City of Union City, do hereby certify that the foregoing Ordinance No. 658-05 was introduced and had its first reading on September 13, 2005 and was passed by the following vote:

AYES: Councilmembers Dutra-Vernaci, Fernandez, Navarro, Valle, Mayor Green
NOES: None
ABSENT: None
ABSTAIN: None

And had its second reading on September 27, 2005, and was adopted by the following vote:

AYES: Councilmembers Dutra-Vernaci, Fernandez, Valle, Mayor Green
NOES: None
ABSENT: Councilmember Navarro
ABSTAIN: None

(d)(5)

Karen Diaz, CMC
City Clerk

Chapter 2.05 CAMPAIGN REPORTING REQUIREMENTS

Sections:

2.05.010 Report—Submission and contents.

2.05.020 Contributions included in report.

2.05.030 Applicable definitions.

2.05.040 Receipt of copy of ordinance.

2.05.010 Report—Submission and contents.

In addition to the requirements of the Political Reform Act of 1974, all candidates for elective office of the City of Union City shall submit an expenditure and contribution report to the Office of the City Clerk, no later than two p.m. on the Friday before the scheduled General Municipal Election. Said expenditure and contribution report shall contain the information called for in Government Code Section 84211 and shall be set forth in the same manner as called for in the forms created by the California Fair Political Practices Commission for "campaign statement" filings. (Ord. 410-93 § 2, 1993)

2.05.020 Contributions included in report.

The reports submitted in accordance with this chapter shall include contributions received and expenditures made by candidates up to midnight of the Wednesday before the scheduled General Municipal Election. (Ord. 410-93 § 3, 1993)

2.05.030 Applicable definitions.

All definitions included in the Political Reform Act of 1974 as they relate to reporting requirements shall be used by candidates in submitting this additional report. (Ord. 410-93 § 4, 1993)

2.05.040 Receipt of copy of ordinance.

Candidate shall sign a form acknowledging receipt of a copy of City Ordinance 410-93 requiring the filing of expenditures and contribution reports as required by the Union City Municipal Code. (Ord. 410-93 § 5, 1993)

Chapter 2.06 CAMPAIGN CONTRIBUTION LIMITATIONS IN MUNICIPAL ELECTIONS

Sections:

2.06.010 Title, purpose and intent.

2.06.015 Receipt of ordinance.

2.06.020 Definitions.

2.06.030 Campaign contributions— Limitations.

2.06.040 Aggregation of contributions.

2.06.050 Loans and unpaid debts to vendors.

2.06.060 Debt retirement committee.

2.06.070 Identification and disclosure of contributors.

2.06.080 Return of campaign contributions.

2.06.090 Enforcement—Violations criminal.

2.06.100 Enforcement—Injunction.

2.06.110 Enforcement—Civil liability.

2.06.010 Title, purpose and intent.

This chapter may be referred to as the "Campaign Contribution Ordinance of the City of Union City."

It is the purpose and intent of the City Council in enacting this chapter to minimize the potential for undue influence by individual or groups on the Mayor and Councilmembers by placing realistic limits on the amount of money that individuals or groups may contribute to political campaigns in municipal elections while providing for a level of discussion of public issues adequate for a

meaningful election campaign; to insure and promote integrity, honesty and fairness in decisions of public policy; to provide for a campaign contribution and expenditure reporting process that will inform the public; to enhance the opportunity for challengers to be competitive with incumbents.

In seeking to establish such limitations on campaign contributions, it is the intent of the City Council to promote a broader and more open participation by all citizens in the electoral process. It is not intended that such limitations should act to deprive or restrict any citizen of his/her rights guaranteed under the First and Fourteenth Amendments of the United States Constitution.

In addition, these provisions are intended to supplement the provisions contained in the Political Reform Act of 1974 (Title 9 of the California Government Code). (Ord. 441-94 § 1 (part), 1994)

2.06.015 Receipt of ordinance.

Candidates shall be required to acknowledge in writing receipt of copy of the ordinance codified in this chapter; however, refusal or failure to sign or otherwise acknowledge receipt of the ordinance codified in this chapter shall not affect the applicability or enforceability of this chapter to said candidate. (Ord. 441-94 § 1 (part), 1994)

2.06.020 Definitions.

Unless the term is specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) shall govern the interpretation of this chapter.

Election Period.

A. For each general municipal election, held in November of odd numbered years to elect three full four-year-term Councilmembers, and odd numbered years to elect one full four-year-term Councilmember and one full four-year-term Mayor, the election period means the period beginning on January 1st or after the previous general municipal election for the affected office and ending on December 31st after the next following (and current) general municipal election for the affected office.

B. For each special municipal election, held to fill a vacancy in the office of the Mayor or Councilmember, the election period means the period beginning on the day the vacancy in the office began and ending on the sixtieth day following the special municipal election, provided that for any candidate at the special election who had established, prior to the vacancy, a committee for the election to the affected office of Mayor or Councilmember, the election period means a period beginning on January 1st after the previous general municipal election for the affected office. (Ord. 441-94 § 1 (part), 1994)

2.06.030 Campaign contributions— Limitations.

A. No person shall make a contribution to any candidate or the controlled committee of such a candidate, and no candidate or the candidate's controlled committee shall accept from each such person a contribution or contributions totaling more than five hundred dollars for any election period.

B. No person shall make a contribution to any committee which makes independent expenditures to support or oppose any candidate, and no such committee shall accept from any person a contribution totaling more than five hundred dollars during an election period.

C. The candidate's own money or property used in the furtherance of the candidate's campaign shall not be subject to the contribution limits of this chapter. (Ord. 441-94 § 1 (part), 1994)

2.06.040 Aggregation of contributions.

For the purpose of the contribution limitations in Section 2.06.030, contributions from persons shall be aggregated as follows:

A. If the same person or a majority of the same persons in fact directs and controls the decisions of two or more entities to make contributions to support or oppose a candidate or candidates for elective office, those affiliated entities shall be considered one person.

B. Business entities in a parent-subsidiary relationship and business entities with the same controlling (more than fifty percent) owner shall be considered one person, unless the business entities act completely independently in their decisions to make contributions to support or oppose candidates for elective office.

C. No committee which supports or opposes a candidate shall have as officers individuals who

serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

D. Nothing in this section shall be construed as to limit the right of individuals in joint tenancy of a savings or checking account from each making a contribution to a campaign in accordance with the limitations of this chapter. (Ord. 441-94 § 1 (part), 1994)

2.06.050 Loans and unpaid debts to vendors.

A. Every loan to a candidate or committee shall be by written agreement and shall be filed with the candidate's or committee's campaign statement on which the loan is first reported.

B. Loans shall not be subject to the contribution limitations of this chapter except in special elections, where loans are considered to be contributions and subject to the limits established in Section 2.06.030.

C. Except in special elections, failure to repay a loan within one year of the election date shall cause the loan to be considered a contribution and to the extent such contribution exceeds the contribution limitation established in Section 2.06.030 it shall be a violation of this chapter and subject to the enforcement provisions of Sections 2.06.100 or 2.06.110, et seq.

D. Debts owed by a candidate or committee to a vendor for goods or services rendered shall be considered campaign contributions for the purposes of this chapter if such debts are not repaid within one year following the election, unless the vendor has made a good faith effort to collect. A good faith effort shall consist of contracting with a collection agency for action, or the filing of a legal action to collect. To the extent such contribution exceeds the contribution limitation established in Section 2.06.030 it shall be a violation of this chapter, and subject to the enforcement provisions of Sections 2.06.090, 2.06.100, and 2.06.110, et seq. (Ord. 441-94 § 1 (part), 1994)

2.06.060 Debt retirement committee.

Notwithstanding Section 2.06.050, a candidate may continue a controlled committee from a previous election period for the sole purpose of receiving contributions for the retirement of campaign debt from the previous election. Contributions to said committee shall be subject to all the limitations of this chapter and shall be cumulated to the previous election period for purpose of the limits established in Sections 2.06.020 and 2.06.030. (Ord. 441-94 § 1 (part), 1994)

2.06.070 Identification and disclosure of contributors.

Identification of contributors is required whenever the cumulative contributions from a single source total one hundred dollars or more during an election period. Required disclosure reports shall be in compliance with the Fair Political Practices Commission's deadlines and guidelines as may be established or amended from time to time. (Ord. 441-94 § 1 (part), 1994)

2.06.080 Return of campaign contributions.

The intended recipient of any contribution which would cause the total amount of contributions to a committee from a single donor to exceed five hundred dollars shall, within forty-eight hours of receipt thereof, return any such excess to the donor. In the event an excessive campaign contribution is received and reported in the campaign report, the recipient shall, within forty-eight hours of notification by the City Clerk, return such excess to the donor; if such excess is not returned within such ten working days, the recipient shall promptly transmit to the City Clerk for deposit in the general fund of the City, a sum equal to such excess. (Ord. 441-94 § 1 (part), 1994)

2.06.090 Enforcement—Violations criminal.

A. Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor.

B. No person convicted of a misdemeanor under this chapter shall be a candidate for an elected City Council office for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for purposes of this section.

C. In addition to other penalties provided by law, a fine up to the greater of one thousand dollars or three times the amount the person failed to report properly or unlawfully contributed, gave or

received may be imposed upon conviction of each violation.

D. Prosecution for violation of this chapter must be commenced within four years after the date on which the violation occurred.

E. Whether or not a violation is inadvertent, the presence or absence of good faith shall be considered in applying the remedies and sanctions of this chapter.

F. If two or more persons are responsible for any violation, they shall be jointly and severally liable. (Ord. 441-94 § 1 (part), 1994)

2.06.100 Enforcement—Injunction.

Any person who resides in the City or who owns property in the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this chapter. The court shall in its discretion require the plaintiff to file a complaint with the District Attorney prior to seeking injunction relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees. (Ord. 441-94 § 1 (part), 1994)

2.06.110 Enforcement—Civil liability.

A. Any person who intentionally or negligently violates any of the reporting requirements of the chapter shall be liable in a civil action brought by the District Attorney or by a person residing within the City for an amount no more than the amount or value not properly reported.

B. Any person who makes or receives a contribution or gift in violation of the provisions of this chapter is liable in a civil action brought by the District Attorney or by a person residing in the City for an amount up to five hundred dollars or three times the amount of the unlawful contribution or gift, whichever is greater.

C. Any person who violates any provision of this chapter for which no specific penalty is provided shall be liable in a civil action brought by the District Attorney for an amount up to one thousand dollars.

D. No civil action alleging a violation of this chapter may be filed against a person pursuant to this section if the District Attorney is maintaining a criminal action against that person pursuant to Section 2.06.090.

E. Any person, before filing a civil action pursuant to this section, must first file with the District Attorney a written request for the District Attorney to commence this action. The request shall include a statement of the grounds for believing a cause of action exists. The District Attorney shall respond within eighty days after receipt of the request, indicating whether he intends to file a civil action. If the District Attorney indicates in the affirmative, and files suit within eighty days thereafter no other action may be brought unless the action brought by the District

Attorney is dismissed without prejudice as provided for in subsection F of this section.

F. Not more than one judgment on the merits with respect to any violation may be obtained pursuant to this section. Actions brought for the same violation or violations shall have precedence for purposes of trial in order of the time filed. Civil actions shall be dismissed once judgment has been entered or a settlement approved by the court in a previously filed action. The court may dismiss a pending action without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the District Attorney or any plaintiff in an action based on the same violation.

G. In determining the amount of liability under this section, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. Whether or not a violation is inadvertent, the presence or absence of good faith shall be considered. If a judgment is entered against the defendant or defendants in an action brought by a person residing in the City under this section, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the general fund of the City. In an action brought by the District Attorney, the entire amount recovered shall be paid to the general fund of the City.

H. No civil action alleging a violation of any provisions of this chapter shall be filed more than four years after the date the violation occurred.

I. The court shall award to a plaintiff (including the District Attorney) or defendant, who prevails in any action authorized by this chapter the costs of litigation incurred by such party, including reasonable attorney's fees. On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs. (Ord. 441-

94 § 1 (part), 1994)